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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-567

GEORGE HATCHER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

GEORGE HATCHER,
10960 Wilshire Boulevard, Suite 210,
Los Angeles, Calif. 90024,
(213) 477-0474,
Petitioner in Propria Persona.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

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GEORGE HATCHER,

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UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

INTRODUCTION.

Petitioner, George Hatcher (Defendant-Appellant below), prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit, entered on April 10, 1978, and the Judgment of Conviction by the United States District Court on January 31, 1977.

OPINION BELOW.

The Memorandum opinion of the United States Court of Appeals for the Ninth Circuit affirming the Judgment of Conviction is attached hereto in Appendix "A", and exists as an unpublished memorandum decision.

JURISDICTION.

The Judgment printed in Appendix "A" hereto, which is sought to be reviewed is dated April 10, 1978.

A rehearing by the United States Court of Appeals for the Ninth Circuit was applied for on April 24, 1978, and denied on June 26, 1978, said denial is attached hereto as Appendix "B".

The Jurisdiction of this Court is invoked under Section 1254(1) of Title 28 of the United States Code.

QUESTIONS PRESENTED.

1. Denial of Due Process and Right to Confrontation.

The Petitioner was denied due process of law by a preindictment delay and was prejudiced due to said delay by denial of his Sixth Amendment rights due to inability to confront the witnesses against him whose memories had dimmed as each was a Government witness and their testimony and ability to recall was controlled by the Government.

2. Violation of Statute of Limitations.

Section 3288 of Title 18 of the United States Code was erroneously applied, allowing a Superseding Indictment, in the instant case since the Indictment was not dismissed due to a legal defect or irregularities in the Grand Jury proceedings and therefore the Superseding Indictment was rendered beyond the Statute of Limitations of Section 3282 of Title 18 of the United States Code.

3. Constitutional Provisions and Statutes Involved.

Fifth Amendment to the Constitution of the United States of America (Appendix "C").

Sixth Amendment to the Constitution of the United States of America (Appendix "D").

Section 3282 of Title 18 of the United States Code (Appendix "E").

Section 3288 of Title 18 of the United States Code (Appendix "F").

STATEMENT OF THE CASE.

1. The Indictment.

On September 1, 1976, the Petitioner, George Hatcher, was indicted for violation of 18 U.S.C. Section 1014 (false statement to a federally insured bank). Both counts of the Indictment alleged that the Petitioner made a false statement in an application for a loan to the Union Bank by submitting a tax return which falsely depicted his income. Count One concerned a loan application submitted on September 10, 1971, with a copy of Petitioner's 1970 United States Income Tax Return. Count Two concerned a loan application submitted on May 18, 1972, with a copy of Petitioner's 1971 United States Income Tax Return.

2. Superseding Indictment.

On November 9, 1977, a First Superseding Indictment ws rendered by the Grand Jury. The Superseding Indictment alleged in Count One that on or about September 10, 1971, the Petitioner submitted a false 1970 Income Tax Return and in Count Two, that on or about May 18, 1972, the Petitioner submitted false 1970 and 1971 Income Tax Returns.

3. Motions to Dismiss.

A. Indictment.

On November 1, 1976, Petitioner moved the Court for dismissal of the Indictment on the grounds of vagueness. Said motion was taken under submission.

B. Preindictment Delay.

On November 1, 1976, and January 4, 1977, Petitioner moved the Court for dismissal of the Indictment on the basis of preindictment delay pursuant to a denial of due process by the Government. Said motions were denied without an evidentiary hearing.

C. Statute of Limitations.

On December 6, 1976, Petitioner moved to dismiss the First Superseding Indictment as it was beyond the statute of limitations of 18 U.S.C. Section 3282. Said motion was denied.

4. The Trial and the Verdict.

The Petitioner, George Hatcher, pled not guilty to the charges and trial commenced on January 3, 1977. The Petitioner waived his right to trial by jury and the matter was tried before the Court, Honorable William Matthew Byrne, Judge of the United States District Court for the Central District of California. At the conclusion of the trial, the Petitioner made a motion for acquittal. Said motion was denied. The Court, at the conclusion of the trial, found the Petitioner guilty.

5. The Judgment and Sentence.

On January 31, 1977, judgment was entered and Hatcher was sentenced to 20 months to run concurrent with a State of California sentence which Hatcher was then serving.

6. Appeal to the United States Court of Appeals for the Ninth Circuit.

On December 21, 1977, Petitioner, George Hatcher, filed his opening brief with the United States Court of Appeals for the Ninth Circuit. On December 30, 1977, the Court granted Petitioner's Motion to file a late brief and ordered that the brief be filed. On March 14, 1978, the Court ordered the matter submitted without oral argument.

By a Memorandum Decision rendered April 10, 1978, the Judgment of Conviction of Petitioner was affirmed. Petitioner filed a Petition for Rehearing on April 24, 1978 and a Motion for Stay of Mandate. Both were denied on June 26, 1978.

The within Petition follows to review Petitioner's claims regarding denial of his Fifth and Sixth Amendment rights and the violation of the Statute of Limitations.

STATEMENT OF THE FACTS.

During July or August, 1971, the Petitioner, George Hatcher, approached Eugene Eichler, a certified public accountant, regarding application for a professional loan. Subsequent to this, Eichler's office through several employees including William Meade, prepared and compiled the necessary documents for presentation to Union Bank, Panorama City, California, in the form of a professional loan application, loan package. The loan package was submitted to Gordon Hein installment loan officer at the Union Bank in Panorama City.

The loan application was signed September 10, 1971, and apparently filed the same day.

Pursuant to the application, a loan in the amount of $150,000.00, plus interest of $45,000.00 was dis-

bursed at the direction of the Petitioner. Sometime in 1972, the loan became past due.

In March of 1973, the Internal Revenue Service began investigating Hatcher's income and tax status. Pursuant to the investigation, Internal Revenue Service Special Agent, James A. Cerks, discovered the possible violation of Section 1014 of Title 18, of the United States Code. The information was transmitted to the Chief, Intelligence Division, Internal Revenue Service. On September 17, 1973, prosecution for violation of 18 U.S.C. Section 1014 was recommended.

During the Internal Revenue Service investigation, each of the witnesses that subsequently testified at trial on behalf of the Government were interviewed.

Thirteen months later, in October, 1974, the problems with the loan and the recommendations for prosecution were reported to the Federal Bureau of Investigation by the Internal Revenue Service. Six months after the Internal Revenue Service report, Special Agent Stutzenbecker of the Federal Bureau of Investigation, on March 18, 1975, interviewed Petitioner regarding the matter.

On September 1, 1976, eighteen months after the interview with Hatcher by the Federal Bureau of Investigation, twenty-four months after the Federal Bureau of Investigation received the Internal Revenue Service report and thirty-six months after the original recommendation for prosecution by the Internal Revenue Service, Petitioner was indicted for violation of 18 U.S.C. Section 1014. The indictment was rendered days before running of the Statute of Limitations of Section 3282 of Title 18 of the United States Code.

After several Motions to Dismiss (see: *ante*), the trial commenced on January 3, 1977. Count Two of the Superseding Indictment was dismissed on the day of trial by the Court.

At trial the Government called David Frandsen and Gordon Hein of the Union Bank; Eugene Eichler, the accountant that had prepared the loan papers; Charles Cruz and Gino D. Urbano, accountants for the Petitioner; James A. Cerks of the Internal Revenue Service and W. J. Stutzenbecker of the Federal Bureau of Investigation.

Each of the percipient witnesses at trial were unable to recall the specific material facts regarding the loan application.

Frandsen was unable to recall any conversations or their content with either Hatcher or the accountant who prepared the forms, Eichler (R.T. 90, 91, 96).[1] Hein was unable to remember whether or not he relied on the tax form in making his recommendation in approving the loan (R.T. 182), and what forms were submitted with the application (R.T. 106). Finally, Eichler, the key witness, as he was the conduit through which the transaction occurred, was unable to recall most of the facts and circumstances surrounding the loan application preparation. Eichler could not recall who worked on the application (R.T. 130), or who filled out the forms (R.T. 238, 239).

Further, Eichler did not remember key conversations and discussions (R.T. 231, 233, 234, 244, 245-246, and 247).

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[1]Each of the citations denoted "R.T. 90" are to pages of the Reporter's Transcript. Each of the pages referred to are attached as Appendix "G".

REASONS FOR ALLOWANCE OF THE WRIT.

I.

Petitioner's Rights Under the Fifth Amendment to the United States Constitution to Due Process of Law and the Sixth Amendment to the United States Constitution to Confrontation of Witnesses Were Violated by the Government's Unreasonable Preindictment Delay.

In *United States v. Marion,* 404 U.S. 307 (1971), this Court held that a preindictment delay prior to arrest is violative of the Due Process Clause of the Fifth Amendment to the United States Constitution (*Id.* at 319, and 321). The Opinion went on to state that:

> ". . . the Due Process Clause of the Fifth Amendment would require dismissal of the indictment if it were shown at trial that the preindictment delay in this case caused substantial prejudice to appellees' rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused." (*Id.* at 324). See also *United States v. Ewell,* 383 U.S. 116, 122 (1966); *United States v. Erickson,* 474 F.2d 505, 507 (9th Cir. 1973).

The *Marion* decision basically indicated two elements which must be shown to indicate dismissal based on preindictment delay. Initially, actual or substantial prejudice to the Defendant must be shown; and secondly, intentional delay by the government (*Id.* at 325).

Finally, this Court in *Marion* indicated that it was impossible to delineate the exact circumstances upon which a dismissal for preindictment delay should be had. The Court stated in pertinent part:

> "However, we need not, and could not now, determine when and in what circumstances actual prejudice resulting from preaccusation delays requires the dismissal of the prosecution. It would be unwise at this juncture to attempt to forecast our decision in such cases . . ."
>
> "To accommodate the sound administration of justice to the rights of the defendant to a fair trial will necessarily involve a delicate judgment based on the circumstances of each case." *Marion, supra,* at 324-325.

In essence, a balancing test was adopted by the Court in determining preindictment delay matters, and that the precise facts and circumstances for dismissal were to be left to the lower courts. See: *United States v. Lovasco,* 431 U.S. 783, 787 (1977).

In *Marion,* the defendants alleged no prejudice due to the delay of some thirty-eight months by the Government but simply that the amount of time was "an unreasonably oppressive and unjustifiable time after the alleged offenses." (*Id.* at 310).

In *United States v. Lovasco,* 431 U.S. 787 (1977), the defendants alleged prejudice due to the loss of two material witnesses during the eighteen months between the commission of the crime charged and the indictment. The defendant, though, did not state how the witnesses would have aided the defense (*Id.* at 790, 52 L.Ed.2d at 756).

In neither *Marion* nor *Lovasco* was any other right or theory of prejudice alleged other than denial of due process due to loss of memory of defense witnesses.

In the instant matter, each of the witnesses whose memories had dimmed were prosecution witnesses.

Their inability to testify as to specifics of the transaction seriously impaired Petitioner's rights pursuant to the Sixth Amendment Right of Confrontation of witnesses against a defendant and thereby was prejudiced by the long delay.

The Sixth Amendment to the United States Constitution provides that

> "In all criminal prosecutions, the accused shall enjoy the right . . . *to be confronted with the witnesses against him.*" (Emphasis added).

The Supreme Court has held that the right of confrontation is

> "[o]ne of the fundamental guarantees of life and liberty . . . long deemed so essential for the due protection of life and liberty that it is guarded against legislative and judicial action by provisions in the Constitution of the United States and in the constitutions of most if not all of the States comprising the Union". *Kirby v. United States,* 174 U.S. 47, 55, 56 (1899).

Unjustified limitation of Defendant's right to cross-examine and confront witnesses against him at trial may constitute a confrontation clause violation (*Smith v. Illinois,* 390 U.S. 129 (1968)), or a denial of due process (*Alford v. United States,* 282 U.S. 687 (1931)). See also: *Pointer v. Texas,* 380 U.S. 400 (1965); *Douglas v. Alabama,* 380 U.S. 415 (1965); *Snyder v. Massachusetts,* 291 U.S. 97 (1934); 79 Harv.L.Rev. 144.

Hatcher's prejudice is existent in his inability to probe Government witnesses through cross-examination at trial and pretrial investigation. In essence, by waiting nearly five years to indict Hatcher, the Government

has effectively denied Hatcher the opportunity to discover "what the witnesses knew" and is in the position of having the prosecution circumventing a showing of prejudice through traditional methods. Hatcher, therefore, has been prejudiced by the inability to confront the witnesses pursuant to the Sixth Amendment and thereby has been denied due process under the Fifth Amendment by the preindictment delay.

Further, it would seem that the Government's conduct in the instant case has risen to the level of the violations of "the community's sense of fair play and decency" (*Rochin v. California,* 342 U.S. 165, 173 (1952)), and those "fundamental conceptions of justice which lie at the base of our civil and political institutions." *Mooney v. Holohan,* 294 U.S. 103, 112 (1935).

Therefore, this Court should accept the within matter for review to determine whether when a long preindictment delay touches upon and denies another fundamental due process right the matter should be dismissed. Further, review should be had to determine whether conduct of the sort in the instant case should be proscribed and the indictment dismissed as it violates the fundamental fair play and standards described in *Rochin* and *Mooney.*

II.

The Superseding Indictment Was Rendered Subsequent to the Statute of Limitations and Section 3288 of Title 18 of the United States Code Was Erroneously Applied.

The purpose of a Statute of Limitations is ". . . to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal

sanction." *Toussie v. United States,* 397 U.S. 112, 114 (1969). The limitation is designed to protect individuals from having to defend themselves from overly stale charges when the underlying facts may have become obscured by the passage of time and ". . . to minimize the danger of official punishment because of acts in the far-distant past." *Id.*, at 114, 115.

This Court has stated the principle that ". . . criminal limitations statutes are to be liberally interpreted in favor of repose." *United States v. Scharton,* 285 U.S. 518, 522 (1932). See also: *United States v. Habig,* 390 U.S. 222, 227 (1968); *United States v. Marion,* 404 U.S. 307, 322, 323 (1971).

Section 3282 of Title 18 of the United States Code provides a Statute of Limitations of five years for all offenses other than capital offenses.

In the case at bench, the Petitioner was indicted on two counts of violation of 18 U.S.C. Section 1014 on September 1, 1976, nine days prior to the statute of limitations. On November 2, 1976, Defendant moved the trial court for an order dismissing the Indictment as it was insufficient. After much discussion the trial court took the matter under submission until November 10, 1976, so as to allow the Government to obtain a superseding indictment. On November 9, 1976, Superseding Indictment was rendered by the Grand Jury.

The indictment of September 1, 1976, indicates that the materially false statement made to the Union Bank was that Hatcher submitted "to said bank a purported United States Internal Revenue Service tax return which falsely depicted George Hatcher's income for the year 1970, . . .". It is evident that the proof necessary for conviction under the indictment was an analysis

of Hatcher's 1970 income. In other words, a simple statement that the return submitted was false would have been insufficient.

On November 10, 1976, a Superseding Indictment was rendered. This indictment dropped all allegations as to income and stated that Hatcher's materially false statement was a false income tax return. The Superseding Indictment stated, in pertinent part:

> ". . . defendant George Hatcher knowingly did make a materially false statement to Union Bank that a document showing an adjusted gross income of $98,092.46 submitted to Union Bank in connection with said loan was a true copy of George Hatcher's 1970 United States Income Tax Return filed with the Internal Revenue Service, whereas said document was not a true copy of George Hatcher's 1970 Income Tax Return, as he then and there well knew." (Emphasis added). (Appendix "G").

This indictment called for simple proof as to whether or not the income tax return given to the bank was the one submitted to the Internal Revenue Service. Clearly, the two indictments call for substantially different proof, preparation, defense strategy, and witnesses by both the prosecution and defense.

In the case at bench, the changes in the Superseding Indictment as compared to the Indictment involve more than clerical errors and amplification of statutory language.

The only statutory provision which might at first glance seem to extend the five-year limitation period of 18 U.S.C. Section 3282 is 18 U.S.C. Section 3288. This section provides in relevant part:

> "Whenever an indictment is dismissed for any error, defect, or irregularity with respect to the Grand Jury, . . . after the period prescribed by the statute of limitations has expired, a new indictment may be returned in the appropriate jurisdiction within six calendar months of the date of the dismissal of the indictment . . ." (Emphasis added). (Appendix "F").

In the instant case, though, the original Indictment was not dismissed but taken under submission.

Therefore this Court should grant review to determine whether Section 3288 of Title 18 of the United States Code should be interpreted to allow a Superseding Indictment when there was no dismissal of the original Indictment.

Further, this Court should grant review to determine whether the Government should be entitled to utilize the provisions of Section 3288 when their own improvidence has clearly caused the situation.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

GEORGE HATCHER,

Petitioner in Propria Persona.

APPENDIX A.

Memorandum.

United States Court of Appeals, for the Ninth Circuit.

United States of America, Appellee, v. George Hatcher, Appellant. No. 77-2264.

Appeal from the United States District Court for the Central District of California.

Filed: April 10, 1978.

Before: ELY, TRASK, and ANDERSON, Circuit Judges.

Hatcher appeals from his conviction, in a trial without jury, of having made a false statement to an insured bank in a loan application, a violation of 18 U.S.C. § 1014. The alleged offense occurred on or about September 10, 1971. An indictment was returned on September 1, 1976, and a superseding indictment was filed on November 10, 1976.

Hatcher alleges that the District Court erred in denying his motion to dismiss, first on the ground of unduly prejudicial preindictment delay, and second on the ground that the superseding indictment on which he was tried was filed beyond the applicable limitations period. Hatcher further contends that the evidence was insufficient to support the judgment and that the District Court failed to find the existence of an essential element of the offense charged. We reject Hatcher's arguments.

PREINDICTMENT DELAY

The Supreme Court has held in *United States v. Marion*, 404 U.S. 307 (1971) and *United States v. Lovasco*, 431 U.S. 783 (1977), that a balancing test must be applied in determining whether a lengthy preindictment delay requires dismissal of the indictment.

The factors to be considered are whether actual, non-speculative prejudice is shown, the length of delay, and the reasons behind it. *See United States v. Pallan,* .... F.2d .... (9th Cir. March 6, 1978); *United States v. Holm,* 550 F.2d 509 (9th Cir. 1977); *United States v. Mays,* 549 F.2d 670 (9th Cir. 1977).

In *United States v. Mays, supra,* the preindictment delay was four and one half years. In the interim, three material witnesses had died and the memories of many of the live witnesses had dimmed. The majority wrote:

> First of all, there must be some demonstration of actual prejudice resulting from the delay. . . . [T]he burden of presenting such prejudice is on the defendant. To establish actual prejudice sufficient to warrant a dismissal, the defendant must show not only the loss of the witness and/or evidence but also just [sic] demonstrate how that loss is prejudicial to him. *Id.* at 677. (Citations omitted.)

After actual prejudice has been shown, the burden shifts to the Government to satisfactorily explain the delay. *Id.* at 678. Only if the Government has been culpable intentionally, or through negligence, will a dismissal be appropriate. *Id.*

Hatcher attempts to carry his required burden of showing prejudice by asserting that the preindictment delay in his case was excessive and unreasonable and that certain witnesses' memories have faded because of the lapse of time. Both contentions are without merit.

An Internal Revenue Service investigation for possible tax fraud occurred in 1973. According to one

Stutzenbacker, a Special Agent of the Federal Bureau of Investigation (FBI), the FBI's investigation commenced on October 15, 1974. Thereafter, various interviews were conducted. These interviews were conducted between March 18, 1975 and December 5, 1975. Requests to the Revenue Service by the United States Attorney's Office, working in conjunction with the FBI, for the relevant tax forms were made in July, 1975. The returns were received in January, 1976. Although the Government's investigation may not have been a model of speed and efficiency, the record does demonstrate that investigation and preparation were ongoing until shortly before the indictment was returned. We note particularly that this case deals with a preindictment delay, an area wherein "the applicable statute of limitations . . . is . . . the primary guarantee against bringing stale criminal charges," *United States v. Marion, supra,* at 322, and the "Due Process Clause has a limited role to play in protecting against oppressive [preindictment] delay," *United States v. Lovasco, supra,* at 789. Accordingly, we decline the appellant's invitation to characterize the preindictment period of investigation and preparation as obviously excessive and unreasonable when the record bears track of a continuous and ongoing investigation.

Hatcher also attempts to demonstrate prejudice by pointing to the failure of several government witnesses to recall the precise circumstances surrounding the loan application and the submission of a bogus income tax return which purported to be a copy of the actual return filed for the year 1970. There is little question that the witnesses' memories had dimmed. Yet, other than the mere assertion that the witnesses could not recall certain conversations, there was no offer by Hatch-

er as to what might have been the witnesses' testimony had they been able to recollect fully. *See United States v. Mays, supra,* at 680. The mere dimming of a memory is not sufficient. *United States v. Galardi,* 476 F.2d 1072 (9th Cir. 1973).

We cannot find, in light of appellant's lame attempt to demonstrate the requisite prejudice, that the trial judge erred in denying Hatcher's motion to dismiss because of preindictment delay. Further, on the facts of this case, we do not view the trial court's failure to conduct an evidentiary hearing as being fatal. The appellant's request for an evidentiary hearing was, at best, equivocal. Moreover, the trial judge extended to Hatcher the opportunity for further hearings on the issue of preindictment delay if appellant could come forward with any evidence of actual prejudice. Hatcher did not accept the invitation to substantiate his claim of prejudice; thus, he is now in no position to complain.

STATUTE OF LIMITATIONS

Hatcher argues that the superseding indictment upon which he was convicted was rendered subsequent to the applicable limitations period, 18 U.S.C. § 3282. There is no question but that the original indictment was timely filed. A motion to dismiss for vagueness was taken under submission by the trial court pending the obtaining by the United States Attorney of a new indictment by November 10, 1976. The trial court clearly indicated that it would dismiss the indictment if a superseding indictment were not filed and that it was holding the potential dismissal in abeyance so that Hatcher would not have to pay for a second bond should he be reindicted.

The new indictment selected one of the alternate interpretations of the original, allegedly vague indictment. The superseding indictment was based on the same occurrence and the same date as the superseded indictment. The filing of an indictment tolls the statute for the charges involved. The superseding indictment was brought during the life of the first indictment and, thus, was timely. *United States v. Wilsey,* 458 F.2d 11 (9th Cir. 1972). Moreover, 18 U.S.C. § 3289 provides that if a dismissal occurs after the period prescribed in the statute of limitations, a new indictment based on the same facts may be filed within six months. *United States v. Charnay,* 537 F.2d 341 (9th Cir. 1976). Here, the superseding indictment was based on the same facts as the initial indictment and was not barred by the statute of limitations.

SUFFICIENCY OF THE EVIDENCE

It is axiomatic that, in an appeal such as this, we are required to view the evidence in the light most favorable to the Government. *Glasser v. United States,* 315 U.S. 60 (1942). From the record, it is clear that reasonable inferences could properly be drawn to establish that Hatcher had submitted the false return to the bank and that he had done so for the purpose of influencing the bank's action on his loan application.

SUFFICIENCY OF THE FINDINGS OF FACT

Finally, Hatcher argues that the trial court did not comply with the requirements of Fed. R. Crim. P. 23(c), claiming that the court failed to make a finding of materiality of the tax return in the bank's consideration of the loan application. Our review of the trial

court's findings discloses that Hatcher's contention in this respect is unfounded. A finding of materiality was indeed made.

The judgment of conviction is

AFFIRMED.

APPENDIX B.

Order.

United States Court of Appeals, for the Ninth Circuit.

United States of America, Appellee, v. George Hatcher, Appellant. No. 77-2264.

Filed: June 26, 1978.

Before: ELY, TRASK, and ANDERSON, Circuit Judges.

The Petition for Rehearing is denied.

The Clerk is directed to file the appellant's Motion for stay of mandate, received in the Clerk's office on April 25, 1978.

The Motion is denied.

APPENDIX C.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX D.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

APPENDIX E.

United States Code, Title 18, Section 3282.

"Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."

APPENDIX F.

United States Code, Title 18, Section 3288.

"Whenever an indictment is dismissed for any error, defect, or irregularity with respect to the grand jury, or an indictment or information filed after the defendant waives in open court prosecution by indictment is found otherwise defective or insufficient for any cause, after the period prescribed by the applicable statute of limitations has expired, a new indictment may be returned in the appropriate jurisdiction within six calendar months of the date of the dismissal of the indictment or information, or if no regular grand jury is in session in the appropriate jurisdiction when the indictment or information is dismissed within six calendar months of the date when the next regular grand jury is convened, which new indictment shall not be barred by any statute of limitations."

APPENDIX G.

Frandsen—Direct

best of your knowledge?

* * *

MR. GRAHAM: Excuse me, your Honor. If there is going to be testimony regarding that exhibit, I would like Mr. Lynch to move it into evidence.

THE COURT: It is not to the contents of the exhibit yet.

MR. GRAHAM: Very well.

BY THE WITNESS:

A What I—What was the question?

BY MR. LYNCH:

* * *

Q Did you have any meetings with Mr. Hatcher concerning this at all?

* * *

Q Was anyone else involved in preparing this loan package besides Mr. Hatcher or Mr. Berger, to the best of your knowledge?

MR. GRAHAM: Objection, your Honor; no foundation.

THE COURT: Sustained.

BY MR. LYNCH:

Q Do you have any knowledge regarding anybody else—did anybody else discuss this loan with you besides Mr. Hatcher or Mr. Berger?

A Well, Mr. Hein was discussing it with me. He would bring it to me. He was in charge of the installment loan area. He brought the package to me.

* * *

Q Have you had an opportunity to examine Exhibit 1?

A Yes.

Q Does it appear to be the loan package that was submitted, and does it appear to include all the documents that were submitted by the applicants?

A Yes.

MR. LYNCH: I move for the admission of Exhibit 1.

MR. GRAHAM: Your Honor, I would object to it on the basis that I believe there are documents that are not part of the loan package in there. Perhaps Mr. Frandsen hasn't had a chance to note which documents there are.

THE WITNESS: That is true. There are some bank documents here that are created by the bank that would not be part of the package, but this is the summation of the loan package.

MR. LYNCH: All right.

* * *

* * *

A By Mr. Hatcher.

Q Now, what was the procedure, if any, which the bank followed to verify signatures which appeared on loan applications?

A They were either witnessed by an officer—we had a signature card on file with the borrower—in other words, a checking account or savings account by the borrower, or we would have a notary public, and we also send out cards to previous banks, and the previous banks guarantee the signature or confirm the signature, so there is four or five ways to confirm the signatures.

* * *

Q Do you know Mr. Hatcher's signature?

A Pretty well.

Q Does that appear to be it—

A Yes.

Q —on Exhibit 1?

All right. Are there any other documents, as you leaf through it, on which Mr. Hatcher's signature appears on Exhibit 1?

A Well, on the note, on the continuing guarantee, on the tax return.

Q Now, looking at the tax return, which is in . . .

* * *

Exhibit 2, your Honor?

THE COURT: Thank you.

MR. LYNCH: May I approach the witness with an exhibit?

THE COURT: Yes.

(Whereupon, Plaintiff's Exhibit 2 was placed before the witness.)

BY MR. LYNCH:

* * *

MR. GRAHAM: Objection, your Honor. That is Count Two. It has been dismissed.

THE COURT: Overruled.

BY THE WITNESS:

A Yes.

BY MR. LYNCH:

* * *

(Brief pause.)

BY THE WITNESS:

A Yes.

BY MR. LYNCH:

Q. Does it contain documents similar to those in . . .

* * *

CROSS-EXAMINATION

BY MR. GRAHAM:

Q Good afternoon, Mr. Eichler.

* * *

Q Do you know whether or not he obtained that return from Mr. Hatcher's secretary without—

A No way of knowing it, sir.

Q —without Mr. Hatcher's knowledge?

A I would not know that.

Q You have no way of knowing whether any of your other employees might have obtained that return either, do you?

A No, sir.

* * *

Hein-Cross

* * *

A Yes, sir.

Q These conversations regarding the delinquency?

A Yes, sir.

Q Mr. Hein, do you have any recollection of actually having seen the return that we have been discussing this morning, the tax return that is in Exhibit 1?

A When—we make many loans there, and I have seen many tax returns. They are all pretty much the same. I could not—there is nothing identifying this particular return from any other that I could pick it out of a group of tax returns, no, sir, but—

Q I'm sorry?

A —but to go to the loan committee, I would have had to have a tax return.

* * *

Eichler-

* * *

THE COURT: When you had this conversation with Mr. Hatcher, did you ask him if you could help him get a loan?

THE WITNESS: No. I'm certain that he indicated that he had a need for a loan, and if I could help him. That was my business, obtaining loans for professional people.

THE COURT: Had you talked to him prior to that time about any money needs that he had?

THE WITNESS: I don't recall whether there was any prior. Probably at that meeting it was discussed.

* * *

THE COURT: Subsequently you helped him get a loan for . . .

* * *

Eichler-

THE WITNESS: I mean, I don't—

* * *

THE COURT: Now, when you made the application to the Union Bank, a form was used; is that right?

THE WITNESS: That is correct.

THE COURT: Did you have those forms in your office?

THE WITNESS: Yes, sir.

THE COURT: Had they been supplied to you by the Union Bank?

THE WITNESS: Yes, sir.

THE COURT: What was your practice with reference to—Strike that.

Did you use any particular branch of the Union Bank?

THE WITNESS: Yes, sir.

THE COURT: Which branch was that?

THE WITNESS: Beverly Hills and Panorama City at that time.

THE COURT: Was there any reason to select one branch over the other?

THE WITNESS: I had most of my dealings at that particular point in time with Mr. Hein and Mr. Frandsen at the Panorama City Branch. We were using the Beverly Hills Branch primarily for a leasing program.

* * *

THE COURT: Does that word "consolidation"—is that something you would use in the normal practice of your applications for these loans?

THE WITNESS: Yes, we did on many occasions.

THE COURT: What did that mean?

THE WITNESS: That the purpose of the money to be used was to pay off other obligations that the borrower might have had.

THE COURT: Do you see the second page which is marked W-23? That is the promissory note and the federal disclosure.

THE WITNESS: Yes.

THE COURT: Did you have those forms in your office?

THE WITNESS: No, sir.

* * *

THE WITNESS: Yes, sir.

* * *

THE COURT: Now, did you have a practice that you followed with the Union Bank in submitting an application for professional loan, any standardization as to documents that would be submitted?

THE WITNESS: We had a check list within our own office that would be on our folder that we file—file folder that we would have for a client, yes, sir.

THE COURT: Was this check list in a printed form, you mean?

THE WITNESS: It was printed on the outside of the folder.

THE COURT: Do you have a folder at your office now for the Hatcher loan?

THE WITNESS: No, sir.

THE COURT: Did you ever have one?

THE WITNESS: Yes, sir.

THE COURT: What happened to it?

THE WITNESS: Milburn Industries stopped doing business in March of 1974, and we kept a corporate records—did not keep any of our client files.

THE COURT: They were destroyed?

THE WITNESS: Yes, sir.

THE COURT: What was the check list?

THE WITNESS: Probably most of the things that are on it, credit application, financial statement, which included balance sheets, profit and loss, purpose of loan.

Part of the check list might have been—would have been a cover letter, which we did in some cases. In some cases we did not consider it necessary—tax return—those would primarily be the—We had others on there that—such as other types of collateral, life insurance assignment, disability insurance assignment.

In other words, our check list included many things that were not always necessary at any given particular moment. We would go down and tick them off, check them off if they were applicable. If they were not, we would so indicate.

* * *

* * *

THE WITNESS: . . . On a loan of this size, I would not normally have a messenger take it out and drop it off to him. It would be something I would have called him on, discussed, see if they had any interest in it.

THE COURT: Did you have any conversation with Mr. Hatcher at any time with reference to this loan about how much income would be necessary to get a loan of this type?

THE WITNESS: No, sir.

THE COURT: All right. Mr. Lynch?

BY MR. LYNCH:

Q With reference to any of the documents that you did submit or your company submitted, can you tell us, either from practice or habit or from personal recollection, how you would have gone about obtaining them from the client, in this case, Mr. Hatcher?

MR. GRAHAM: Objection, your Honor, to the form of the question.

THE COURT: Sustained.

BY MR. LYNCH:

Q All right. Can you tell us, based on anything, how you obtained—would have obtained them from Mr. Hatcher?

MR. GRAHAM: Objection to the form of the question.

THE COURT: Sustained.

BY MR. LYNCH:

Q Did you have a common practice in this regard, obtaining documents from a client?

A My answer would be—clients would be notified as to what documentation would be required, either

at the time of the submission of the application—and certainly before the time that the bank would consider it for approval.

Q Did you have a practice with regard to obtaining any documents without the knowledge or consent of the client?

MR. GRAHAM: Objection, your Honor.

THE COURT: Overruled.

BY THE WITNESS:

A We would never, to my knowledge, do such.

BY MR. LYNCH:

* * *

APPENDIX H.

Indictment—[18 U.S.C. §1014: Making a False Statement to Insured Bank in Application for a Loan].

United States District Court, for the Central District of California, March, 1976 Grand Jury.

United States of America, Plaintiff, v. George Hatcher, Defendant. No. CR 76-1127.

Filed: Sept. 1, 1976.

The Grand Jury charges:

COUNT ONE
[18 U.S.C. §1014]

On or about the 10th day of September, 1971, in Los Angeles in the Central District of California, defendant GEORGE HATCHER knowingly did make a materially false statement in an application for a loan submitted by GEORGE HATCHER on said date to the Union Bank, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve said loan, by submitting to said bank a purported United States Internal Revenue Service tax return which falsely depicted GEORGE HATCHER's income for the year 1970, as GEORGE HATCHER then and there well knew.

COUNT TWO
[18 U.S.C. §1014]

On or about the 18th day of May, 1972, in Los Angeles in the Central District of California, defendant GEORGE HATCHER knowingly did make a materially false statement in an application for a loan submitted by GEORGE HATCHER on said date to the Union

Bank, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve said loan, by submitting to said bank a purported United States Internal Revenue Service tax return which falsely depicted GEORGE HATCHER's income for the years 1970 and 1971 as GEORGE HATCHER then and there well knew.

A TRUE BILL
/s/ Illegible
Foreman

s/ William D. Keller
WILLIAM D. KELLER
United States Attorney

APPENDIX I.

First Superseding Indictment—[18 U.S.C. §1014: Making a False Statement to Insured Bank in Application for a Loan].

United States District Court, for the Central District of California, March, 1976 Grand Jury.

United States of America, Plaintiff, v. George Hatcher, Defendant. No. CR 76-1127(A)-WMB.

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On or about the 10th day of September, 1971, in Los Angeles in the Central District of California, defendant GEORGE HATCHER knowingly did make a materially false statement in an application for a loan submitted by GEORGE HATCHER on said date to the Union Bank, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve said loan, by representing to Union Bank that a document showing an adjusted gross income of $98,092.46 submitted to Union Bank in connection with said loan was a true copy of GEORGE HATCHER's 1970 United States Income Tax Return filed with the Internal Revenue Service, whereas said document was not a true copy of GEORGE HATCHER's 1970 Income Tax Return, as he then and there well knew.

COUNT TWO
[18 U.S.C. §1014]

On or about the 18th day of May, 1972, in Los Angeles in the Central District of California, defendant GEORGE HATCHER knowingly did make a materially false statement in an application for a loan submitted by GEORGE HATCHER on said date to the Union Bank, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank to approve said loan, by representing to Union Bank that documents showing adjusted gross incomes of $98,-092.46 and $101,906.32, respectively, submitted to Union Bank in connection with said loan were true copies of GEORGE HATCHER's 1970 and 1971 United States Income Tax Returns filed with the Internal Revenue Service, whereas said documents were not true copies of GEORGE HATCHER's 1970 and 1971 Income Tax Returns, as he then and there well knew.

A TRUE BILL

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Foreman

WILLIAM D. KELLER
United States Attorney